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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,098	09/30/2003	Craig A. Nickell	80445-1120	4812
38406	7590	06/05/2006	EXAMINER	
MICHAEL A. O'NEIL, P.C. 5949 SHERRY LANE, SUITE 820 DALLAS, TX 75225			A, PHI DIEU TRAN	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/675,098	<b>Applicant(s)</b> NICKELL ET AL.	
	<b>Examiner</b> Phi D. A	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

“line 5 “mixtures thereof” is indefinite as it is confusing the scope of the claim. It is unclear what makes up “ mixtures thereof”.

As applicant has not responded to the 112 issue above set forth in the previous office action, the 112 rejection above is hereby repeated.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Voris et al (2002/0192259) in view of Koehler et al (6298597).

Voris et al discloses a method of controlling the entry of vapor and insects into building comprising a floor having an accessible underside including the steps of providing a thermoplastic resin selected from the group including polyethylene, blending the selected thermoplastic resin with the fipronil to provide an insect controlling feedstock, extruding the

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insect controlling feedstock into an insect controlling vapor barrier (paragraph 86 page 6), securing the insect controlling vapor barrier in engagement with the underside of the floor of the building thereby preventing vapor and insects from entering the building through the floor (figures 6-7), the buildings being equipped with interior floor surfaces, securing the insect controlling film to the interior floor surfaces of the building in such a manner that it remains immobile, wrapping the film around insulation batts.

Voris et al does not show the step of providing fipronil to mix with other resin to form insect deterrent plastic.

Koehler et al discloses fipronil being well known chemical for forming termite barrier as it is slow acting and thus can handle a colony of termite.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Voris et al's method to show the step of providing fipronil to mix with other resin to form insect deterrent plastic because fipronil is a well known chemical for forming termite barrier and using the chemical would enable the eradication of colonies of termite as taught by Koehler et al.

Voris et al as modified shows all the claimed method steps.

5. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voris et al (2002/0192259) in view of Koehler et al (6298597)

Voris et al as modified shows all the claimed limitations except for the step of cutting the insect controlling film.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Voris et al's modified structure to show the step of cutting the insect

controlling film because cutting a sheet to fit a particular dimension for installation is well known in the art.

***Response to Arguments***

6. Applicant's arguments filed 3/15/06 have been fully considered but they are not persuasive.

With respect to applicant's argument that Koehler et al is entirely irrelevant to the claims at issue, examiner respectfully disagrees. Applicant's invention is to a way of controlling and preventing insects/termites. Both Voris et al and Koehler et al, disclose a way of controlling/terminating/preventing insects/termites. The references are definitely related and in the same field. Combining the teaching of Voris et al with Koehler et's teaching of fipronil, which is a well known material killing termite, would result in Voris et al having all the claimed limitations. Using a well known chemical (fipronil) that eradicates termites, as disclosed by Koehler et al, in Voris et al's teaching is encouraged as Voris et al is also concerned with eradicating/preventing termites. The argument is thus moot.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phi Dieu Tran A

PA

5/27/06

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